

EXHIBIT B

EPA Final Determination Letter, Denying Sierra Club's FOIA Request as 'Not Reasonably Specific'

(June 20, 2019)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 20, 2019

OFFICE OF THE
EXECUTIVE SECRETARIAT

Matthew E. Miller
Sierra Club
50 F. Street NW, 8th Floor
Washington, DC 20001

Subject: Freedom of Information Act Request EPA-HQ-2019-005176

Dear Mr. Miller:

This responds to your FOIA request dated April 22, 2019, which seeks, "all records that Administrator Wheeler relied on in asserting that most of the threats from climate change are 50 to 75 years out" and "all records, produced, commissioned, or otherwise obtained by EPA that support the conclusion that most of the threats from climate change are 50 to 75 years out." Your request was designated EPA-HQ-2019-005176 and assigned to the Office of the Administrator for response.

The EPA is unable to process your request because it fails to adequately describe the records sought. EPA regulations state that, "whenever possible requesters should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter." 40 C.F.R. § 2.102(c). Your request does not seek specific records but is rather a question framed as a FOIA request.¹

Federal courts have also held that "FOIA was not intended to reduce government agencies to full-time investigators on behalf of requestors" and that agencies are not required to spend "countless numbers of personnel hours seeking needles in bureaucratic haystacks." *United States Department of Justice Guide to the Freedom of Information Act, 2009 Edition* at 47-48. Even when an agency can identify documents with sufficient precision a request can still be so broad as to impose an unreasonable burden on an agency. This occurs when the request requires the agency to locate, review, redact, and arrange for inspection of a vast quantity of material that is largely unnecessary to the requestor's purpose. *AFGE v. Department of Commerce*, 907 F.2d 203, 208-209 (D.C. Cir. 1990).

¹ "FOIA creates only a right of access to records, not a right to require an agency to disclose its collective reasoning behind agency actions, nor does FOIA provide a mechanism to challenge the wisdom of substantive agency decisions." *Gillin v. Dep't of the Army*, No. 92-325, slip op. at 10 (D.N.H. May 28, 1993), *aff'd*, 21 F.3d 419 (1994).

I understand, based on our June 20, 2019 conversation, that you believe this is a proper request and are not inclined to offer any modifications. If upon reconsideration within the next two weeks you desire to reopen and revise this request, you may contact me at (202) 564-5290 or Yarbrough.Christopher@epa.gov. Please include the tracking number in any communications. You may appeal this response with an email to hq.foia@epa.gov or by writing to the National Freedom of Information Act officer at:

U.S. Environmental Protection Agency
William Jefferson Clinton Federal Building
Records, FOIA and Privacy Branch
1200 Pennsylvania Avenue, NW (2822T)
Washington, D.C. 20460

Please note that only the U.S. Postal Service delivers to the address above. If you would like to deliver your appeal in person, via courier service, or via an overnight-delivery service, you must address your correspondence to 1301 Constitution Avenue, NW, Room 6416J, Washington, D.C. 20001.

Your written appeal must be received no later than 90 calendar days from the date of this letter and should include the request number listed above. The EPA will not consider appeals received after the 90 calendar-day limit. In addition, appeals received after 5 p.m. Eastern time are considered as having been received the next business day. For the quickest possible handling, the subject line of your email or the appeal letter and its envelope should be marked "Freedom of Information Act Appeal."

If warranted you may seek dispute-resolution services from the EPA's FOIA public liaison at hq.foia@epa.gov, (202) 566-1667, or from the National Archives and Records Administration's Office of Government Information Services. You may contact the Office of Government Information Services with an email to ogis@nara.gov; by calling toll free (877) 684-6448 or (301) 837-1996; with a fax to (301) 837-0348; or by mail to National Archives and Records Administration, Office of Government Information Services, 8610 Adelphi Road, Room 2510, College Park, Maryland 20740-6001.

Sincerely,



Chris Yarbrough
Attorney-Advisor